



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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IN REPLY
REFER TO DG

May 5, 2003

**MEMORANDUM OF DECISION ON THE DEBARMENT OF LANTERN SOFTWARE
SOLUTIONS, INC., JEFFREY HEISLER AND ANITA FREEMAN**

On June 14, 2002, the Defense Logistics Agency (DLA) issued Notices of Suspension to Lantern Software Solutions, Inc., Jeffrey Heisler and Anita Freeman. On February 21, 2003, Notices of Proposed Debarment were issued to Lantern Software Solutions, Jeffrey Heisler and Anita Freeman (Respondents). The letters notified Respondents that DLA was proposing to debar them from Government procurement, nonprocurement and sales programs.

INFORMATION IN THE RECORD

The administrative record shows that:

1. Lantern Software Solutions, Inc. (Lantern), is a corporation located in Stafford, Virginia. The corporation develops database applications and provides computer programming services.
2. During all or part of the time of the conduct described below, Anita Freeman was president and chief executive officer of Lantern.
3. During all or part of the time of the conduct described below, Jeffrey Heisler was chief technology officer of Lantern.
4. On September 10, 2002, Jeffrey Heisler was convicted in the United States District Court for the Eastern District of Virginia for violating 18 U.S.C. § 371 (Conspiracy).

RESPONDENTS' SUBMISSION

On June 14, 2002, the Defense Logistics Agency (DLA) suspended Lantern Software Solutions, Jeffrey Heisler and Anita Freeman. On February 21, 2003, they were proposed for debarment. By letter dated September 6, 2002, attorney for Respondents replied to the suspension letters.

The essence of Respondents' submission is that (i) Jeffrey Heisler cooperated fully and made restitution, (ii) Respondents are currently responsible Government contractors, and (iii) debarment is not necessary.

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DISCUSSION AND ANALYSIS OF THE RESPONSES

In determining whether Respondents should be debarred, I have specifically considered the information and argument raised in Respondents' submissions as it relates to the mitigating factors set forth in the FAR 9.406-1(a). The ten mitigating factors and their relevance to Respondents' submissions are as follows:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as cause for debarment.

The record contains no information in the record regarding a standards of conduct or internal control system at the time of the activity. Lantern employs approximately six to eight people. Attorney for Respondents states that *"Lantern's management recognizes and understands the seriousness of the misconduct giving rise to this debarment matter, and has implemented programs to prevent its reoccurrence. Lantern rewrote their standards of conduct and internal control regulations to prevent misbilling in the future, and have instituted an ethics training program."*

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

Respondents did not bring the activity cited as a cause for debarment to the attention of the Government. Respondents' criminal conduct was uncovered by the Government.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

The administrative record does not reflect an internal investigation conducted by Respondents.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

Respondents cooperated with Government agencies during the investigation. *"Mr. Heisler's cooperative efforts included attending several lengthy debriefings where he provided the government with incriminating information about other false billings in the government contracting industry, including information that has led to investigations regarding fraudulent time sheets submitted to the government by other contractors, software theft by other government contractors, numerous requests for inappropriate favors by government employees to government contractors and the provision of those favors, and instances where fraud was used to secure substantial government contracts."*

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(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

Respondents made restitution of \$244,000. The United States District Court judge for the Eastern District of Virginia who tried the case found that the United States Government had been fully compensated by Jeffrey Heisler for its losses.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

The administrative record does not indicate any discipline for anyone who engaged in the wrongdoing.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

Attorney for Respondents states that *"Mr. Heisler is no longer CEO of Lantern, and indeed, is no longer a shareholder, having divested his ownership interest in the company."*

(8) Whether the contractor has instituted or agreed to institute new or revised control procedures and ethics training programs.

Attorney for Respondents states, *"Lantern rewrote their standards of conduct and internal control regulations to prevent misbilling in the future, and have instituted an ethics training program."*

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

Respondents began taking corrective steps in early 2000 and all its changes are currently in place.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Respondents state that they recognize and understand the seriousness of the misconduct giving rise to the cause for debarment and have implemented programs and procedures designed to prevent a recurrence. Respondents state that they take responsibility for their actions.

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Respondents correctly point out that although debarment may be based on the fact of a criminal conviction as evidence of a lack of honesty or integrity, a debarment proceeding addresses the present responsibility or fitness of an individual or firm to be a Government contractor. Respondents submit that they are presently responsible and that the facts and circumstances of the offenses to which Jeffrey Heisler pleaded no longer Lantern's present responsibility.

Attorney for Respondents argues, *"While Mr. Heisler pled guilty to criminal charges, we submit that he has demonstrated sufficient present responsibility to receive a punishment from DLA that is less than full disbarment."* Whether Jeffrey Heisler has been sufficiently punished is not at issue in this debarment proceeding and therefore was not considered. Punishment is not an objective of debarment, but is the responsibility of the Department of Justice. The restitution and the 20% reduction of Jeffrey Heisler's sentence to 12 months and one day of imprisonment does not demonstrate his present responsibility.

Attorney for Respondents argues that the conduct at issue was the only incident since 1977 that called into question Jeffrey Heisler's integrity or honesty. I note that the "incident" occurred over a long period of time and involved numerous false invoices. The "incident" was not a single event but a series of transactions conducted over a period of years. The facts at issue here are established by his plea and his conviction. Jeffrey Heisler has admitted guilt to an offense which demonstrates a lack of business honesty and integrity which cannot be tolerated in Government contractors.

I have carefully considered the administrative record. The information and argument advanced by Respondents in opposition to the proposed debarment is not sufficient to persuade me that a period of debarment is not necessary to protect the Government. I have determined that Lantern and its management do not possess the level of responsibility required of those who do business with the Government and that a period of debarment is necessary to ensure the full protection of the Government's business interests.

FINDINGS

Based on the summary of facts above, I find that:

1. On September 10, 2002, Jeffrey Heisler was convicted in the United States District Court for the Eastern District of Virginia for violating 18 U.S.C. § 371 (Conspiracy). The conviction provides a cause for the debarment of Jeffrey Heisler, pursuant to FAR 9.406-2(a)(1), (5) and (c).

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2. Pursuant to FAR 9.406-5(a), the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence. The criminal conduct of Jeffrey Heisler may be imputed to Lantern because Jeffrey Heisler's conduct occurred in connection with the performance of duties for or on behalf of Lantern, or with the knowledge, approval, or acquiescence of Lantern. The imputation of Jeffrey Heisler's criminal conduct to Lantern provides a cause for its debarment, pursuant to FAR 9.406-5 (a).

3. Under FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates.") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment."

a. Lantern and Jeffrey Heisler are affiliates, because, directly or indirectly, Jeffrey Heisler controls or can control Lantern. The affiliation of Lantern and Jeffrey Heisler provides a separate and independent cause for the debarment of Lantern, pursuant to FAR 9.406-2 (c).

b. Lantern and Anita Freeman are affiliates, because, directly or indirectly, Anita Freeman controls or can control Lantern. The affiliation of Lantern and Anita Freeman provides a cause for her debarment, pursuant to FAR 9.406-2 (c).

DECISION

Pursuant to the authority contained in Federal Acquisition Regulation (FAR) Subpart 9.4, the Defense FAR Supplement (DFARS) Subpart 209.4, and based upon the administrative record and the findings set forth above, Lantern Software Solutions, Inc., Jeffrey Heisler and Anita Freeman are debarred effective this date.

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The debarment is to remain in effect through June 13, 2005, which is three years from the date Respondents were initially suspended from Government contracting. The debarment applies to both procurement, nonprocurement, and sales contracting and is effective throughout the executive branch of the Federal Government unless the head of the agency taking the contracting action or a designee states in writing the compelling reason for continued business dealings between the agency and Lantern Software Solutions, Inc., Jeffrey Heisler and Anita Freeman.

A handwritten signature in cursive script, appearing to read "Susan Chadick".

M. SUSAN CHADICK
Special Assistant for
Contracting Integrity